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To reorganize, consolidate, and expand Federal monitoring, analysis, reporting, and policy functions with respect to foreign acquisition of United States businesses and assets in vital and sensitive national interest sectors of the United States economy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1983

Mr. KASTENMEIER introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, Government Operations, and Foreign Affairs

A BILL

To reorganize, consolidate, and expand Federal monitoring, analysis, reporting, and policy functions with respect to foreign acquisition of United States businesses and assets in vital and sensitive national interest sectors of the United States economy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SHORT TITLE; TABLE OF CONTENTS**

2 **SECTION 1.** This Act, with the following table of con-
3 tents, may be cited as the "Foreign Investment Reorganiza-
4 tion Act of 1983".

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FINDINGS AND PURPOSE

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SEC. 2. (a) The Congress finds that—

(1) Federal efforts to monitor, analyze, and report on foreign investment in the United States and its impact on United States national interests are inadequate and ineffective;

(2) the activities of eighteen separate Federal agencies and entities with responsibility for monitoring, policy, analysis, promotion, or regulation with respect to foreign investment in the United States lack coordination and consistency;

(3) existing Federal statutory and Executive order restrictions on foreign acquisitions in certain industry sectors are piecemeal and haphazard, and do not pro-

1 tect the United States in many vital and strategic na-
2 tional interest sectors of our economy;

3 (4) United States national interests are becoming
4 dangerously vulnerable to foreign governmental and
5 private investors in certain sectors of our economy as a
6 result of rapidly increasing foreign acquisitions of
7 United States enterprises, assets, and resources; and
8 this has resulted in (A) more and more decisions about
9 the United States economy being made outside the
10 United States; (B) the unintended transfer of sensitive
11 high technology and research capability; (C) the export
12 of finite natural resources; (D) reduced international
13 competition; and (E) increased acquisitions of healthy
14 United States companies rather than the creation of
15 new manufacturing facilities and new jobs; and

16 (5) present Federal policy fails to distinguish be-
17 tween beneficial and harmful acquisitions.

18 (b) It is the purpose of this Act—

19 (1) to reorganize and consolidate in one agency,
20 and thereby improve and strengthen, all Federal re-
21 sponsibilities for monitoring, analyzing, regulating, and
22 reporting on, foreign investment in the United States;
23 and

24 (2) to protect the United States national interest,
25 security, and economy, to safeguard United States

1 businesses and natural resources, and to create the in-
2 stitutional mechanisms necessary to carry out these ob-
3 jectives.

4 (c) The Congress declares that nothing in this Act is
5 intended to restrain or deter beneficial foreign investment in
6 nonvital national interest sectors of the United States econo-
7 my, unregulated by this Act.

8 (d) Nothing in this Act shall be construed as superseding
9 or otherwise affecting the authority and powers of the Presi-
10 dent under the International Emergency Economic Powers
11 Act (Public Law 95-223; 50 U.S.C. App. 1701 et seq.).

12 TITLE I—FOREIGN INVESTMENT COMMISSION

13 PART A—FUNCTIONS AND AUTHORITY

14 ESTABLISHMENT OF COMMISSION

15 SEC. 101. (a) There is established an independent regu-
16 latory commission to be known as the Foreign Investment
17 Commission (hereafter in this Act referred to as the “Com-
18 mission”).

19 (b)(1) The Commission shall be composed of five mem-
20 bers appointed by the President, by and with the advice and
21 consent of the Senate. One of the members shall be desig-
22 nated by the President as Chairman.

23 (2) To the maximum extent practical, the collective
24 membership of the Commission shall reflect interests and ex-
25 pertise in the areas of business, labor, consumerism, interna-

1 tional trade and finance, and such other areas as are relevant
2 to the functions of the Commission.

3 (3) Not more than three members of the Commission
4 may be members of the same political party.

5 (4) Members shall not engage in any other business, vo-
6 cation, or employment while serving on the Commission.

7 (c)(1) Members shall hold office for a term of five years
8 and may be removed by the President only for neglect of
9 duty, malfeasance in office, or commission of a crime bearing
10 on fitness to serve. The terms of office of the members first
11 taking office shall expire (as designated by the President at
12 the time of appointment) at the end of one, two, three, four,
13 and five years, respectively.

14 (2) Any Commissioner appointed to fill a vacancy occur-
15 ring prior to the expiration of the term for which his prede-
16 cessor was appointed shall be appointed only for the remain-
17 der of such term. A Commissioner may continue to serve
18 after the expiration of his term until a successor has taken
19 office.

20 (d) The Chairman may designate any other Commission-
21 er as Acting Chairman to act in the place and stead of the
22 Chairman during his absence. The Chairman (or the Acting
23 Chairman in his absence) shall preside at all sessions of the
24 Commission. A quorum for the transaction of business shall
25 consist of at least three members present. Actions of the

1 Commission shall be decided by majority vote of the members
2 present.

3 (e) The principal office of the Commission shall be in or
4 near the District of Columbia, where its general sessions
5 shall be held, but the Commission may sit anywhere in the
6 United States.

7 (f) Except as provided in section 518 of title 28, United
8 States Code, relating to litigation before the Supreme Court,
9 attorneys designated by the Commission may appear for, and
10 represent the Commission in, any civil action brought in con-
11 nection with any function carried out by the Commission pur-
12 suant to this Act or as otherwise authorized by law.

13 (g)(1) Whenever the Commission submits any budget es-
14 timate or request to the President or the Office of Manage-
15 ment and Budget, it shall concurrently transmit copies of that
16 estimate to the Senate and the House of Representatives for
17 referral to appropriate committees thereof, which shall in-
18 clude the Committee on Governmental Affairs of the Senate
19 and the Committee on Government Operations of the House
20 of Representatives. At the request of a committee of the Con-
21 gress, additional information concerning the amount of appro-
22 priations originally requested by the Commission shall be
23 submitted to such committee.

24 (2) Whenever the Commission transmits any legislative
25 recommendations, or testimony or comments on legislation,

1 to the President or the Office of Management and Budget, it
2 shall concurrently transmit copies thereof to appropriate com-
3 mittees of the Senate and the House of Representatives,
4 which shall include the Committee on Governmental Affairs
5 of the Senate and the Committee on Government Operations
6 of the House of Representatives. No officer or agency of the
7 United States shall have any authority to require the Com-
8 mission to submit its legislative recommendations, or testimo-
9 ny or comments on legislation, to any officer or agency of the
10 United States for approval, comments, or review, prior to the
11 submission of such recommendations, testimony, or com-
12 ments to the Congress. In instances in which the Commission
13 voluntarily seeks to obtain the comments or review of any
14 officer or agency of the United States, the Commission shall
15 include a description of such actions in its legislative recom-
16 mendations, or testimony or comments on legislation, which
17 it transmits to the Congress.

18 (h) For purposes of section 552b of title 5, United States
19 Code, the Commission is an agency. For purposes of chapter
20 9 of such title, the Commission is an independent regulatory
21 agency.

22 **TRANSFER OF FUNCTIONS TO COMMISSION**

23 **SEC. 102. (a)** There are transferred to the Commission
24 all functions relating to monitoring, evaluating, analyzing,
25 and reporting on the nature, extent, and impact of foreign

1 investment in the United States and of United States invest-
2 ment abroad—

3 (1) of the Secretary and the Department of Com-
4 merce, the Secretary and the Department of the Treas-
5 ury, and the Director and the Office of Management
6 and Budget under the International Investment Survey
7 Act of 1976 (22 U.S.C. 3101 et seq.), as delegated
8 pursuant to Executive Order Number 11961 (January
9 19, 1977); and

10 (2) of the Secretary and the Department of
11 Energy under paragraph (8) of section 657 of the De-
12 partment of Energy Organization Act (42 U.S.C
13 7267(8)).

14 (b) There are transferred to the Commission all func-
15 tions relating to formulating, developing, and implementing
16 United States policy with respect to foreign investment in the
17 United States—

18 (1) of the Committee on Foreign Investment in
19 the United States under section 1 of Executive Order
20 Numbered 11858 (May 7, 1975); and

21 (2) of the United States Trade Representative
22 under Reorganization Plan Numbered 3 of 1979 (5
23 U.S.C. App.).

24 (c) There are transferred to the Commission all func-
25 tions relating to enforcing prohibitions and restrictions on for-

1 eign investment, control, and influence in vital national inter-
2 est sectors of the United States economy—

3 (1) of the Secretary and the Department of De-
4 fense under the defense industrial security program es-
5 tablished by Executive Orders Numbered 10865 (Feb-
6 ruary 20, 1960) and 11652 (March 8, 1972);

7 (2) of the Federal Communications Commission
8 under the Communications Act of 1934 (47 U.S.C.
9 310 (a) and (b), 222(d), 734(d); 22 U.S.C. 611); and

10 (3) of the Nuclear Regulatory Commission under
11 sections 103 and 104 of the Atomic Energy Act of
12 1954 (42 U.S.C. 2133, 2134).

13 (d) There are transferred to the Commission all func-
14 tions relating to reviewing, examining, and limiting foreign
15 investment in sensitive national interest sectors of the United
16 States economy—

17 (1) of the Civil Aeronautics Board under the Civil
18 Aeronautics Act of 1938 (49 U.S.C. 1301(13), 1377,
19 and 1378);

20 (2) of the Secretary and the Department of the
21 Interior under the Mineral Leasing Act (30 U.S.C.
22 181, 182, 184 (g) and (h), 185(a), 188, and 352), inso-
23 far as such functions relate to reciprocity determina-
24 tions and enforcement as applied to foreign citizens.

1 (e) There are transferred to the Commission all func-
2 tions relating to encouraging and promoting beneficial and
3 nonsensitive foreign direct investment in new plant and
4 equipment (in economically distressed areas and regions) of
5 the International Trade Administration and the Economic
6 Development Administration of the Department of Com-
7 merce.

8 (f) There are transferred to the Commission the follow-
9 ing agencies (or portions thereof):

10 (1) From the Department of Commerce—

11 (A) the Division of Investment Analysis and
12 the Division of Investment Research of the Office
13 of Trade and Investment Analysis;

14 (B) the International Investment Division of
15 the Bureau of Economic Analysis; and

16 (C) so much of the International Trade Ad-
17 ministration and the Economic Development Ad-
18 ministration as performs the functions described in
19 subsection (e).

20 (2) From the Department of State, so much of the
21 Office of International Investment of the Bureau of
22 Economic and Business Affairs as performs the func-
23 tions described in subsection (b).

24 (3) From the Treasury Department, Office of the
25 Assistant Secretary for International Affairs—

1 (A) the Office of Data Management;

2 (B) the International Banking and Portfolio

3 Investment Division; and

4 (C) the Office of International Investment.

5 (4) From the Department of Energy, so much of
6 the Office of International Energy Cooperation as per-
7 forms the functions described in subsection (a).

8 (5) From the Office of the United States Trade
9 Representative, the Investment Policy Division.

10 (6) From the Department of Defense, so much of
11 the Directorate for Security Plans and Programs and
12 of the Directorate of Industrial Security as performs
13 the functions described in subsection (c).

14 (7) From the Department of the Interior, so much
15 of the Bureau of Land Management and the Office of
16 the Assistant Secretary for Policy, Budget, and Admin-
17 istration as performs the functions described in subsec-
18 tion (d)(2).

19 (g) All functions transferred by subsection (c) or (d)(1)
20 which relate to ownership standards and licensing and other
21 procedures with respect to control of foreign ownership shall
22 be superseded by the requirements of sections 104 through
23 108 to the extent such functions are inconsistent or redun-
24 dant with such requirements. But the percentage limitations
25 on foreign ownership of aviation business enterprises (DIIC

1 Code 450) shall continue in effect as the maximum limita-
2 tions applicable to Commission determinations under sections
3 105 and 106 with respect to proposed acquisitions of signifi-
4 cant interests in that sector.

5 **ADDITIONAL FUNCTIONS OF COMMISSION**

6 **SEC. 103.** In addition to the functions transferred to or
7 established in the Commission by other provisions of this Act,
8 the Commission shall—

9 (1) monitor, evaluate, analyze, and report on the
10 nature, extent, and impact of foreign investment in the
11 United States economy;

12 (2) in consultation with the Foreign Investment
13 Advisory Committee, formulate, develop, and imple-
14 ment United States policy with respect to foreign in-
15 vestment in the United States economy;

16 (3) enforce prohibitions on foreign acquisitions in
17 vital national interest sectors under section 104;

18 (4) review and examine foreign acquisitions in
19 sensitive national interest sectors under sections 105
20 and 106;

21 (5) issue advisory opinions, upon application by
22 any person, as to the applicability of section 104 or
23 105 to any proposed or concluded acquisition by such
24 person;

1 (6) participate with the United States Trade Rep-
2 resentative and the Department of State in negotiation
3 of bilateral and multilateral agreements relating to in-
4 ternational investment;

5 (7) facilitate, encourage, and promote, with a
6 minimum expenditure of financial incentives and
7 through increased coordination with State govern-
8 ments, beneficial foreign investment investment in non-
9 sensitive sectors of the United States economy, espe-
10 cially in new plant and equipment in economically dis-
11 tressed areas and regions;

12 (8) monitor periodically the behavior of foreign-
13 owned corporations in vital and important national in-
14 terest sectors;

15 (9) compile complaints and objections from United
16 States business enterprises on the lack of reciprocity in
17 other countries to investments in nonsensitive sectors
18 of their economies, and advise Congress and agencies
19 of the executive branch of continuing patterns of non-
20 reciprocity; and

21 (10) investigate possible violations of this Act.

22 PROHIBITION OF FOREIGN INVESTMENT IN VITAL NATION-
23 AL INTEREST SECTORS OF UNITED STATES ECONOMY

24 SEC. 104. (a) It shall be unlawful for any foreign person
25 to acquire, after the effective date of this title, a significant

1 interest in, or a significant interest in the assets of, any busi-
2 ness enterprise which is engaged, or which within the five
3 years preceding the acquisition has been engaged, in activi-
4 ties in a vital national interest sector of the United States
5 economy.

6 (b) Subsection (a) shall not apply to prohibit an acquisi-
7 tion if, prior to such acquisition—

8 (1) the ownership and control of each identifiable
9 part or unit (including any division or subsidiary) of the
10 business enterprise to be acquired, which is or was en-
11 gaged in activities in a vital national interest sector of
12 the United States economy, is or has been transferred
13 or otherwise divested from that business concern; and

14 (2) all technology, expertise (including human re-
15 sources), information (in whatever form), and other ma-
16 terial arising from, or used in the conduct of, activities
17 in a vital national interest sector of the United States
18 economy are or have been transferred or otherwise di-
19 vested with the parts or units transferred or divested
20 pursuant to paragraph (1).

21 (c) The Commission shall closely monitor compliance
22 with subsection (b), and no acquisition may proceed under
23 such subsection except with the express written approval of
24 the Commission by majority vote, after compliance with sec-
25 tion 106(a)(2). The Commission shall make no determination

1 or decision under this subsection until all lawfully required
2 information and documentary material has been submitted to
3 the Commission for review.

4 REVIEW OF FOREIGN INVESTMENT IN SENSITIVE NATION-
5 AL INTEREST SECTORS OF UNITED STATES ECONOMY

6 SEC. 105. (a) It shall be unlawful for any foreign person
7 to acquire, after the effective date of this title, a significant
8 interest in, or a significant interest in the assets of, any busi-
9 ness enterprise which is engaged, or which within the one
10 year preceding the acquisition has been engaged, in activities
11 in a sensitive national interest sector of the United States
12 economy, unless—

13 (1) such foreign person has complied with each re-
14 quirement imposed by or under sections 106 and 107;
15 and

16 (2) the proposed acquisition has been approved by
17 the Commission under section 106.

18 (b) The Commission may require any foreign person
19 making an acquisition subject to subsection (a) to establish a
20 voting trust arrangement under which legal title to any iden-
21 tifiable part or unit (including any division or subsidiary) of
22 the business enterprise to be acquired, which is or was en-
23 gaged in activities in a sensitive national interest sector of
24 the United States economy, is transferred to a disinterested
25 United States person approved by the Commission prior to

17

1 the acquisition. The Commission shall disapprove any acqui-
2 sition by a foreign person who refuses or fails to establish
3 such a trust, as required by the Commission.

4 (c) The Commission shall, in accordance with section
5 106(f), closely monitor the creation and operation of voting
6 trust arrangements required under subsection (b).

7 **PROCEDURAL REQUIREMENTS**

8 **SEC. 106. (a)(1)** Each foreign person proposing to make
9 an acquisition subject to section 105, and each business en-
10 terprise in which a significant interest is to be acquired
11 through such an acquisition, shall—

12 (A) notify the Commission of the proposed acquisi-
13 tion;

14 (B) furnish to the Commission (at the time of such
15 notice and thereafter) such information and documen-
16 tary material as the Commission may require, includ-
17 ing—

18 (i) the identity of each person who will be a
19 holder, directly or indirectly, of any significant in-
20 terest in the business enterprise or asset acquired;
21 and

22 (ii) a list of any items on the commodity con-
23 trol list, issued under the Export Administration
24 Act, which are produced, in whole or in part, or

1 owned or controlled by the business enterprise
2 which is the subject of such acquisition.

3 (2) Each foreign person proposing to make an acquisi-
4 tion subject to section 104 (b) and (c), and each business en-
5 terprise in which a significant interest is to be acquired
6 through such an acquisition, shall—

7 (A) notify the Commission of the proposed acquisi-
8 tion;

9 (B) furnish to the Commission such information
10 and documentary material as the Commission may re-
11 quire, including—

12 (i) identity of each person to whom any
13 transfer is made under the divestiture plan, and
14 the identity of each holder, directly or indirectly,
15 of any significant interest in such person; and

16 (ii) a list of all goods, services, and technol-
17 ogies which arise from activities in a vital national
18 interest sector of the United States economy.

19 (b) Within five working days after receipt of any notice
20 under subsection (a), the Commission, for the purpose of so-
21 liciting comments and additional factual information, shall—

22 (1) notify each appropriate Federal agency, each
23 appropriate committee of the Congress, the foreign In-
24 vestment Advisory Committee, and the government of
25 each State in which the Commission determines the

1 foreign person or business enterprise concerned is sig-
2 nificantly present;

3 (2) publish a copy of such notice in the Federal
4 Register; and

5 (3) provide each entity described in paragraph (1)
6 with a summary of information received pursuant to
7 subsection (a).

8 (c)(1) In making its determination, with respect to an
9 acquisition subject to section 105, whether to approve or dis-
10 approve the acquisition or to require the establishment of a
11 voting trust under subsection (b) of such section, the Commis-
12 sion shall determine whether the net potential economic
13 benefits, direct and indirect, of the acquisition are sufficient
14 (A) to justify the increased degree of foreign control in the
15 industries concerned, and (B) to outweigh the potential or
16 actual negative economic and political consequences resulting
17 from the acquisition.

18 (2) In making the determination required by paragraph
19 (1) of this subsection, the Commission shall consider the fol-
20 lowing factors:

21 (A) the net benefits likely to accrue, including in-
22 fusion of equity capital, job creation, increased exports
23 of nonsensitive material, and increased research and
24 development and technology creation;

1 (B) the possible effects on national security, taking
2 into account (i) technology transfer, including goods
3 and technologies on the commodity control list; (ii) the
4 export of essential natural resources; (iii) the extent to
5 which the proposed acquisition increases the exposure
6 of a United States industry sector or the United States
7 as a whole to foreign influence; and (iv) the likely op-
8 portunity to influence public opinion in the United
9 States, as a result of the acquisition;

10 (C) the foreign policy implications of the acquisi-
11 tion; and

12 (D) the effects the acquisition may have on com-
13 petition both domestically and internationally.

14 (3) Each determination by the Commission under this
15 subsection shall be rendered by the Commission by majority
16 vote.

17 (d) The Commission shall prepare a statement of the
18 legal and factual basis for each determination under subsec-
19 tion (c). Such statement shall include the reasons for the de-
20 termination in terms of the standards and factors set forth in
21 subsection (c).

22 (e)(1) Each determination by the Commission under sub-
23 section (c) shall be made within ninety days of the date of
24 receipt of the notice, required by subsection (a)(1) with re-
25 spect to such acquisition, unless the Commission determines

1 that it is necessary to extend such period for an additional
2 sixty days to complete its review.

3 (2) Each decision by the Commission with respect to a
4 transfer and divestiture under section 104(b) shall be made
5 within forty-five days after the date of receipt of the notice
6 required by subsection (a)(2) with respect to actions pursuant
7 to a plan of divestiture, unless the Commission determines
8 that it is necessary to extend such period for an additional
9 twenty days to complete such decision.

10 (3) If any person required, pursuant to subsection
11 (a)(1)(B) or (a)(2)(B), to furnish information to the Commis-
12 sion fails or refuses to furnish such information or documen-
13 tary material within five days after such information is re-
14 quested, the applicable time under paragraph (1) or (2) of this
15 subsection shall be extended by the number of days that such
16 failure or refusal continues.

17 (4) The Commission shall make no determination or de-
18 cision of approval under subsection (c) until all lawfully re-
19 quired information or documentary material has been submit-
20 ted to the Commission for review.

21 (f) For the purpose of carrying out its responsibilities
22 under section 105(b), the Commission shall—

23 (1) approve as trustees of a voting trust only indi-
24 viduals who have experience in the industry or indus-
25 tries concerned;

1 (2) have the authority to order the removal of
2 trustees for cause;

3 (3) take such action as is necessary to assure the
4 independence of the trustees from influence by the ben-
5 eficiary in managing the affected part or unit of the
6 business enterprise concerned; and

7 (4) require the submission of periodic reports from
8 such trustees.

9 (g) Information properly designated confidential which
10 has been submitted to or received by the Commission under
11 this section shall not be publicly disclosed except to the
12 extent required by law. This subsection does not constitute
13 authority to withhold information from Congress or from any
14 committee or subcommittee thereof.

15 (h) Determinations by the Commission under subsection
16 (c) of this section are committed to the Commission's discre-
17 tion and are not subject to judicial review. Persons with a
18 right of review under section 702 of title 5, United States
19 Code, may seek judicial review of any final action by the
20 Commission under subsection (a), (b), (e), (f), or (g) by filing
21 an appeal in the United States Court of Appeals for the Dis-
22 trict of Columbia.

23 INVESTIGATIVE AUTHORITY

24 SEC. 107. (a)(1) The Commission may secure directly
25 from any department or agency of the Government informa-

1 tion and documentary material the Commission considers
2 necessary to enable it to carry out this Act and, upon request
3 of the Chairman of the Commission, the head of such depart-
4 ment or agency shall furnish such information and material to
5 the Chairman.

6 (2) Information properly designated confidential shall
7 not be publicly disclosed, except to the extent required by
8 law. This paragraph does not constitute authority to withhold
9 information from Congress or from any committee or subcom-
10 mittee thereof.

11 (b) For the purpose of carrying out any functions under
12 this Act, the Commission may hold such hearings, sit and act
13 at such times and places, take such testimony, and receive
14 such evidence, as the Commission considers advisable. The
15 Commission may administer oaths or affirmations to wit-
16 nesses appearing before it.

17 (c)(1) The Commission shall have the power to issue
18 subpoenas requiring the attendance and testimony of witnesses
19 and the production of any evidence, including documentary
20 material, that relates to any matter under investigation or
21 examination.

22 (2) If a person, including a foreign person found within
23 the United States, refuses to obey such a subpoena and is
24 guilty of contumacy, upon application by the Commission,
25 any district court of the United States for the district (A)

1 within which such person is found or resides or transacts
2 business, or (B) within which the hearing is being conducted,
3 may order such person to appear before the Commission to
4 produce evidence or to give testimony.

5 (3) The subpoenas of the Commission shall be served in
6 the manner provided for subpoenas issued by district courts of
7 the United States.

8 (d) For purposes of sections 6002 and 6004 of title 18,
9 United States Code, the Commission shall be considered an
10 agency of the United States.

11 (e) When so authorized by the Commission, any member
12 or employee of the Commission may take any action which
13 the Commission is authorized to take by this section.

14 (f)(1) The Commission's actions under subsections (a)(1)
15 and (d) are committed to the Commission's discretion and are
16 not subject to judicial review.

17 (2) Persons with a right to review under section 502 of
18 title 5, United States Code, may seek judicial review of any
19 final action by the Commission under subsections (a)(2), (b)
20 and (e) by filing an appeal in the Court of Appeals for the
21 District of Columbia.

22 (3) The Commission may seek appropriate relief in such
23 court of appeals if, within a reasonable time, any agency re-
24 fuses to furnish information requested by the Commission
25 under subsection (a)(1).

2 SEC. 108. (a)(1) Whenever it appears to the Commis-
3 sion that any person is engaged or is about to engage in any
4 act or practice constituting a violation of this Act, a regula-
5 tion thereunder, or an order of the Commission, the Commis-
6 sion may in its discretion bring an action in the appropriate
7 district court of the United States, the United States District
8 Court for the District of Columbia, or the United States
9 courts of any territory or other place subject to the jurisdic-
10 tion of the United States to enjoin such acts or practices, and
11 upon a proper showing a permanent or temporary injunction
12 or restraining order shall be granted without bond.

(2) Upon application of the Commission, the district courts of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue injunctions and orders commanding any person to comply with this Act, a regulation thereunder, or an order of the Commission.

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1 (2) The amount of any civil penalty under this subsec-
2 tion shall be determined by the Commission on the record
3 after an opportunity for a hearing and shall not exceed
4 \$15,000 for each violation in the case of an individual, or
5 \$100,000 for each violation in the case of any other person.
6 Each person against whom or which a penalty has been im-
7 posed may seek judicial review under section 702 of title 5,
8 United States Code, by filing an appeal in the Court of Ap-
9 peals for the District of Columbia Circuit.

10 (c) Whoever (1) willfully fails to submit any information
11 required under this Act, or willfully violates any provision of
12 this Act or any regulation, order, or instruction promulgated
13 under this Act, or (2) willfully furnishes information which
14 the person knows or had reason to know is false or mislead-
15 ing shall, upon conviction, be fined not more than \$50,000
16 and, if an individual, may be imprisoned for not more than
17 one year, or both, and any officer, director, employee, or
18 agent of any corporation who knowingly participates in such
19 violation, upon conviction, may be punished by a like fine,
20 imprisonment, or both.

21 (d)(1) All foreign persons acquiring, between the effec-
22 tive date specified in section 171(b) and the effective date
23 specified in section 171(a), a significant interest in, or a sig-
24 nificant interest in the assets of, any United States business
25 enterprise subject to section 104 or 105 shall, within a rea-

1 sonable period of time, divest itself of such interest held in
2 violation of (A) section 104(a), or (B) a decision or determina-
3 tion by the Commission to disapprove such acquisition under
4 section 104(b) or 105, pursuant to the procedures required
5 under section 106. The Commission shall enforce all viola-
6 tions of this section under section 108(e).

7 (2) No person subject to paragraph (1) of this subsection
8 shall be assessed a civil penalty under subsection (b), or be
9 fined or imprisoned under subsection (c) for a violation of
10 section 104 or 105, to the extent that such violation is reme-
11 died by timely compliance with subsection (e)(1) after the ef-
12 fective date specified in section 171(a).

13 (3) For purposes of this subsection, the notice require-
14 ments in section 106(a)(1)(A) and (a)(2)(A) shall apply to each
15 pending or completed acquisition.

16 (e)(1) Whenever it appears to the Commission that any
17 person has at any time acquired a significant interest in, or a
18 significant interest in the assets of, any United States busi-
19 ness enterprise in violation of section 104 or 105, the Com-
20 mission shall bring an action in the appropriate district court
21 of the United States, the United States District Court for the
22 District of Columbia, or the United States courts of any terri-
23 tory or other place subject to the jurisdiction of the United
24 States to obtain, within a reasonable period of time, a divesti-
25 ture of such acquired interest.

1 (2) Upon application of the Commission, each such court
2 shall have jurisdiction to issue orders commanding any person
3 subject to subsection (d)(1) to divest itself, within a reason-
4 able period of time, of such acquired interest.

5 FOREIGN INVESTMENT ADVISORY COMMITTEE

6 SEC. 109. (a) There is hereby established, under the
7 administrative jurisdiction of the Commission, an Advisory
8 Committee on Foreign Investment. The Committee shall
9 advise the Commission on all matters within its jurisdiction.

10 (b) The Advisory Committee shall be composed of repre-
11 sentatives designated by the head of each of the following
12 agencies:

- 13 (1) the Department of State;
- 14 (2) the Department of Defense;
- 15 (3) the Department of the Treasury;
- 16 (4) the Department of Justice;
- 17 (5) the Department of Commerce;
- 18 (6) the Department of Labor;
- 19 (7) the Department of Energy;
- 20 (8) the Department of Agriculture;
- 21 (9) the Department of Housing and Urban Devel-
22 opment;
- 23 (10) the Office of the United States Trade Repre-
24 sentative;
- 25 (11) the Securities and Exchange Commission;

29

1 (12) the Federal Trade Commission; and

2 (13) the National Security Council.

3 (c) The Commission shall provide the Advisory Commit-
4 tee with such personnel and resources as may be necessary to
5 enable it to carry out its functions.

6 **TERMINATION OF COMMITTEE ON FOREIGN**

7 **INVESTMENT IN THE UNITED STATES**

8 **SEC. 110.** The Committee on Foreign Investment in the
9 United States, established by Executive Order 11858 (May
10 7, 1975), is abolished.

11 **ANNUAL REPORT**

12 **SEC. 111.** The Commission shall prepare and submit to
13 the President and the Congress by March 1 of each year a
14 comprehensive report on the administration of the functions
15 of the Commission for the preceding fiscal year. Such report
16 shall review all data collection, analytical, reporting, policy,
17 regulatory, and promotional activities, and include—

18 (1) a description of the Commission's activities
19 pursuant to paragraphs (1) through (10) of section 103;

20 (2) a description of acquisitions reviewed under
21 sections 104(b) and 105 and decisions made by the
22 Commission;

23 (3) any improvements in data collection and anal-
24 ysis;

1 (4) a detailed survey of the nature and extent of
2 foreign investment in the United States; and

3 (5) such recommendations for additional legislation
4 as the Commission deems necessary to carry out the
5 purposes of this title.

6 **PART B—ADMINISTRATIVE PROVISIONS**

7 **GENERAL AUTHORITY**

8 **SEC. 121.** In carrying out any function transferred by
9 this title, the Commission, or any officer or employee of the
10 Commission, may exercise any authority (including appropri-
11 ation Acts) with respect to such function which was available
12 by law to the official or agency from which such function is
13 transferred, and the actions of the Commission in exercising
14 such authority shall have the same force and effect as when
15 exercised by such official or agency.

16 **DELEGATION**

17 **SEC. 122.** Except as otherwise provided in this title, the
18 Commission may delegate any function to such officers and
19 employees of the Commission as the Commission may desig-
20 nate, and may authorize such successive redelegations of
21 such functions within the Commission as may be necessary or
22 appropriate. No delegation of functions by the Commission
23 under this section or under any other provision of this title
24 shall relieve the Commission of responsibility for the adminis-
25 tration of such functions.

REORGANIZATION

1
2 SEC. 123. (a) The Commission is authorized to allocate
3 or reallocate functions among the officers of the Commission,
4 and to establish, consolidate, alter, or discontinue such orga-
5 nizational entities within the Commission as may be neces-
6 sary or appropriate, but the authority of the Commission
7 under this subsection does not extend to—

8 (1) any office, bureau, unit, or other entity trans-
9 ferred to the Commission and established by statute or
10 any function vested by statute in such an entity or offi-
11 cer of such an entity, except as provided in subsection
12 (b);

13 (2) the abolition of organizational entities estab-
14 lished by this title; or

15 (3) the alteration of the delegation of functions to
16 any specific organizational entity required by this title.

17 (b) The Commission may alter, consolidate, or discon-
18 tinue any organizational entity continued within the Commis-
19 sion or reallocate any function vested by statute in such an
20 entity, upon the expiration of a period of ninety days after the
21 receipt by the Committee on Governmental Affairs of the
22 Senate and the Committee on Government Operations of the
23 House of Representatives of notice given by the Commission
24 containing a full and complete statement of the action pro-
25 posed to be taken pursuant to this subsection and the facts

1 and circumstances relied upon in support of such proposed
2 action.

3 **RULES**

4 **SEC. 124. (a)** The Commission is authorized to prescribe
5 such rules and regulations as the Commission determines
6 necessary or appropriate to administer and manage the func-
7 tions of the Commission.

8 **(b)** The Commission, in promulgating rules and regula-
9 tions as authorized by statute, shall prescribe such rules and
10 regulations in accordance with chapter 5 of title 5, United
11 States Code.

12 **CONTRACTS**

13 **SEC. 125. (a)** Subject to the provisions of the Federal
14 Property and Administrative Services Act of 1949, the Com-
15 mission is authorized to make, enter into, and perform such
16 contracts, grants, leases, cooperative agreements, or other
17 similar transactions with Federal or other public agencies (in-
18 cluding State and local governments) and private organiza-
19 tions and persons, and to make such payments, by way of
20 advance or reimbursement, as the Commission may deter-
21 mine necessary or appropriate to carry out functions of the
22 Commission.

23 **(b)** Notwithstanding any other provision of this title, no
24 authority to enter into contracts or to make payments under
25 this title shall be effective except to such extent or in such

1 amounts as are provided in advance under appropriation
2 Acts. This subsection shall not apply with respect to the au-
3 thority granted under section 131.

4 **REGIONAL AND FIELD OFFICES**

5 **SEC. 126.** The Commission is authorized to establish,
6 alter, discontinue, or maintain such regional or other field
7 offices as the Commission may find necessary or appropriate
8 to perform functions of the Commission.

9 **USE OF FACILITIES**

10 **SEC. 127.** With their consent, the Commission may,
11 with or without reimbursement, use the research, equipment,
12 services, and facilities of any agency or instrumentality of the
13 United States, of any State or political subdivision thereof, or
14 of any foreign government, in carrying out any function of
15 the Commission.

16 **GIFTS AND BEQUESTS**

17 **SEC. 128.** The Commission is authorized to accept,
18 hold, administer, and utilize gifts, bequests and devises of
19 property, both real and personal, for the purpose of aiding or
20 facilitating the work of the Commission. Gifts, bequests, and
21 devises of money and proceeds from sales of other property
22 received as gifts, bequests, or devises shall be deposited in
23 the Treasury and shall be available for disbursement upon the
24 order of the Commission.

1 **TECHNICAL ADVICE**

2 SEC. 129. The Commission is authorized, upon request,
3 to provide advice, counsel, and technical assistance to appli-
4 cants or potential applicants for grants and contracts and
5 other interested persons with respect to any functions of the
6 Commission.

7 **WORKING CAPITAL FUND**

8 SEC. 130. (a) The Commission, with the approval of the
9 Director of the Office of Management and Budget, is author-
10 ized to establish for the Commission a working capital fund,
11 to be available without fiscal year limitation, for expenses
12 necessary for the maintenance and operation of such common
13 administrative services as the Commission shall find to be
14 desirable in the interests of economy and efficiency, including
15 such services as—

16 (1) a central supply service for stationery and
17 other supplies and equipment for which adequate
18 stocks may be maintained to meet in whole or in part
19 the requirements of the Commission and its compo-
20 nents;

21 (2) central messenger, mail, telephone, and other
22 communications services;

23 (3) office space, central services for document re-
24 production, and for graphics and visual aids; and

25 (4) a central library service.

1 (b) The capital of the fund shall consist of any appropri-
2 ations made for the purpose of providing working capital and
3 the fair and reasonable value of such stocks of supplies,
4 equipment, and other assets and inventories on order as the
5 Commission may transfer to the fund, less the related liabil-
6 ities and unpaid obligations. Such funds shall be reimbursed
7 in advance from available funds of agencies and offices in the
8 Commission, or from other sources, for supplies and services
9 at rates that will approximate the expense of operation, in-
10 cluding the accrual of annual leave and the depreciation of
11 equipment. The fund shall also be credited with receipts from
12 sale or exchange of property and receipts in payment for loss
13 or damage to property owned by the fund. There shall be
14 covered into the Treasury as miscellaneous receipts any sur-
15 plus of the fund (all assets, liabilities, and prior losses consid-
16 ered) above the amounts transferred or appropriated to estab-
17 lish and maintain such fund. There shall be transferred to the
18 fund the stocks of supplies, equipment, other assets, liabil-
19 ities, and unpaid obligations relating to the services which
20 the Commission determines, with the approval of the Direc-
21 tor of the Office of Management and Budget, will be per-
22 formed.

23 **FUNDS TRANSFER**

24 **SEC. 131.** The Commission may, when authorized in an
25 appropriation Act in any fiscal year, transfer funds from one

1 appropriation to another within the Commission, except that
2 no appropriation for any fiscal year shall be either increased
3 or decreased pursuant to this section by more than 5 per
4 centum and no such transfer shall result in increasing any
5 such appropriation above the amount authorized to be appro-
6 priated therefor.

7 SEAL OF COMMISSION

8 SEC. 132. The Commission shall cause a seal of office
9 to be made for the Commission of such design as the Com-
10 mission shall approve. Judicial notice shall be taken of such
11 seal.

12 PART C—TRANSITIONAL AND SAVINGS PROVISIONS
13 TRANSFER AND ALLOCATION OF APPROPRIATIONS AND
14 PERSONNEL

15 SEC. 141. (a) Except as otherwise provided in this title,
16 the personnel employed in connection with, and the assets,
17 liabilities, contracts, property, records, and unexpended bal-
18 ance of appropriations, authorizations, allocations, and other
19 funds employed, held, used, arising from, available to, or to
20 be made available in connection with, the functions and of-
21 fices or portions thereof transferred by this title, subject to
22 section 202 of the Budget and Accounting Procedures Act of
23 1950, shall be transferred to the Commission for appropriate
24 allocation. Unexpended funds transferred pursuant to this

1 subsection shall be used only for the purposes for which the
2 funds were originally authorized and appropriated.

3 (b) Positions expressly specified by statute or reorgani-
4 zation plan to carry out functions or offices transferred by
5 this title, personnel occupying those positions on the effective
6 date of this title, and personnel authorized to receive compen-
7 sation in such positions at the rate prescribed for offices and
8 positions at level I, II, III, IV, or V of the Executive Sched-
9 ule (5 U.S.C. 5315-5316) on the effective date of this title,
10 shall be subject to the provisions of section 503.

11 OFFICERS AND EMPLOYEES

12 SEC. 142. (a) The Commission is authorized to appoint
13 and fix the compensation of such officers and employees, in-
14 cluding attorneys, as may be necessary to carry out the func-
15 tions of the Commission. Except as otherwise provided by
16 law, such officers and employees shall be appointed in ac-
17 cordance with the civil service laws and their compensation
18 fixed in accordance with title 5 of the United States Code.

19 (b)(1) At the request of the Commission, the Director of
20 the Office of Personnel Management shall, under section
21 5108 of title 5, United States Code, provide for the establish-
22 ment in each of the grade levels GS-16, GS-17, and GS-18
23 of a number of positions in the Commission equal to the
24 number of positions in that grade level which were used pri-
25 marily for the performance of functions and offices transferred

1 under this title and which were assigned and filled on the day
2 before the effective date of this title.

3 (2) At the request of the Commission, the Director of
4 the Office of Personnel Management shall, under section
5 3104 of title 5, United States Code, provide for the establish-
6 ment of a number of scientific, professional, and technical
7 positions outside of the General Schedule equal to the
8 number of such positions which were used primarily for the
9 performance of functions and offices transferred under this
10 title and which were assigned and filled on the day before the
11 effective date of this title.

12 (3) Appointments to positions provided for under this
13 subsection may be made without regard to the provisions of
14 section 3324 of title 5 of the United States Code, if the indi-
15 vidual appointed in such position is an individual who is
16 transferred in connection with the transfer of functions and
17 offices under this title and, on the day preceding the effective
18 date of this title, holds a position and has duties comparable
19 to those of the position to which appointed hereunder.

20 (4) The authority under this subsection with respect to
21 any position shall terminate when the person first appointed
22 to fill such position ceases to hold such position.

23 (c) The Commission may appoint, without regard to the
24 provisions of title 5, United States Code, governing appoint-
25 ment in the competitive service, up to scien-

1 tific, technical, or professional employees and may compen-
2 sate employees so appointed without regard to the provisions
3 of chapter 51 and subchapter III of chapter 53 of such title
4 relating to classification and General Schedule pay rates. The
5 rate of basic compensation for such employees shall not be
6 equal to or in excess of the minimum rate of pay currently
7 paid for GS-16 of the General Schedule under section 5332
8 of such title.

9 (d) Notwithstanding any other provision of law, the Di-
10 rector of the Office of Personnel Management shall establish
11 positions within the Senior Executive Service for
12 limited-term appointees. The Commission
13 shall appoint individuals to such positions as provided by sec-
14 tion 3394 of title 5, United States Code. Such positions shall
15 expire on the later of three years after the effective date of
16 this title or three years after the initial appointment to each
17 position. Positions in effect under this subsection shall be
18 taken into account in applying the limitations on positions
19 prescribed under section 3134(e) and section 5108 of such
20 title.

21 **EXPERTS AND CONSULTANTS**

22 **SEC. 143. (a)** The Commission may, as provided in ap-
23 propriation Acts, obtain the services of experts and consult-
24 ants in accordance with the provisions of section 3109 of title
25 5, United States Code, and may compensate such experts

1 and consultants at rates not to exceed the daily rate pre-
2 scribed for GS-18 of the General Schedule under section
3 5332 of such title.

4 (b) Upon request of the Commission, the head of any
5 Federal agency is authorized to detail, on a reimbursable
6 basis, any of the personnel of such agency to the Commission
7 to assist it in carrying out its duties under this Act. Such
8 detailed personnel may be organized as ad hoc committees to
9 advise on specialized, technical, or scientific issues.

10 EFFECT ON PERSONNEL

11 SEC. 144. (a) Except as otherwise provided in this title,
12 the transfer pursuant to this title of full-time personnel
13 (except special Government employees) and part-time per-
14 sonnel holding permanent positions shall not cause any such
15 employee to be separated or reduced in grade or compensa-
16 tion for one year after the date of transfer to the Commission.

17 (b) Any person who, on the day preceding the effective
18 date of this title, held a position compensated in accordance
19 with the Executive Schedule prescribed in chapter 53 of title
20 5, United States Code, and who, without a break in service,
21 is appointed in the Commission to a position having duties
22 comparable to the duties performed immediately preceding
23 such appointment shall continue to be compensated in such
24 new position at not less than the rate provided for such previ-

1 ous position, for the duration of the service of such person in
2 such new position or for three years, whichever is less.

3 **AGENCY TERMINATIONS**

4 **SEC. 145. (a)** On the effective date of this title, the fol-
5 lowing agencies shall terminate:

6 (1) From the Department of Commerce—

7 (A) the Division of Investment Analysis and
8 the Division of Investment Research of the Office
9 of Trade and Investment Analysis; and

10 (B) the International Investment Division of
11 the Bureau of Economic Analysis.

12 (2) From the Treasury Department, Office of As-
13 sistant Secretary for International Affairs—

14 (A) the Office of Data Management;

15 (B) the International Banking and Portfolio
16 Investment Division; and

17 (C) the Office of International Investment.

18 (3) From the Office of the United States Trade
19 Representative, the Investment Policy Division.

20 (b) Each position which was expressly authorized by
21 law, or the incumbent of which was authorized to receive
22 compensation at the rate prescribed for level I, II, III, IV, or
23 V of the Executive Schedule (5 U.S.C. 5315–5316), in an
24 office terminated pursuant to this title shall also terminate.

1 INCIDENTAL TRANSFERS

2 SEC. 146. The Director of the Office of Management
3 and Budget is authorized and directed to make such determi-
4 nations as may be necessary with regard to the functions,
5 offices, or portions thereof transferred by this title, and to
6 make such additional incidental dispositions of personnel,
7 assets, liabilities, grants, contracts, property, records, and
8 unexpended balances of appropriations, authorizations, allo-
9 cations, and other funds held, used, arising from, available to,
10 or to be made available in connection with, such functions,
11 offices, or portions thereof, as may be necessary to carry out
12 the provisions of this title. The Director shall provide for the
13 termination of the affairs of all entities terminated by this
14 title and for such further measures and dispositions as may be
15 necessary to effectuate the purposes of this title.

16 SAVINGS PROVISIONS

17 SEC. 147. (a) All orders, determinations, rules, regula-
18 tions, permits, grants, contracts, certificates, licenses, and
19 privileges—

20 (1) which have been issued, made, granted, or al-
21 lowed to become effective by the President, any Feder-
22 al department or agency or official thereof, or by a
23 court of competent jurisdiction, in the performance of
24 functions which are transferred under this title to the
25 Commission, and

1 (2) which are in effect at the time this title takes
2 effect,
3 shall continue in effect according to their terms until modi-
4 fied, terminated, superseded, set aside, or revoked in accord-
5 ance with the law by the President, the Commission, or other
6 authorized official, a court of competent jurisdiction, or by
7 operation of law.

8 (b)(1) The provisions of this title shall not affect any
9 proceedings, including notices of proposed rulemaking, or any
10 application for any license, permit, certificate, or financial as-
11 sistance pending on the effective date of this title before any
12 department, agency, commission, or component thereof, func-
13 tions of which are transferred by this title; but such proceed-
14 ings and applications, to the extent that they relate to func-
15 tions so transferred, shall be continued. Orders shall be issued
16 in such proceedings, appeals shall be taken therefrom, and
17 payments shall be made pursuant to such orders, as if this
18 title had not been enacted; and orders issued in any such
19 proceedings shall continue in effect until modified, terminat-
20 ed, superseded, or revoked by the Commission, by a court of
21 competent jurisdiction, or by operation of law. Nothing in this
22 subsection shall be deemed to prohibit the discontinuance or
23 modification of any such proceeding under the same terms
24 and conditions and to the same extent that such proceeding

1 could have been discontinued or modified if this title had not
2 been enacted.

3 (2) The Commission is authorized to promulgate regula-
4 tions providing for the orderly transfer of proceedings contin-
5 ued under paragraph (1) to the Commission.

6 (c) Except as provided in subsection (e)—

7 (1) the provisions of this title shall not affect suits
8 commenced prior to the effective date of this title, and

9 (2) in all such suits, proceedings shall be had, ap-
10 peals taken, and judgments rendered in the same
11 manner and effect as if this title had not been enacted.

12 (d) No suit, action, or other proceeding commenced by
13 or against any officer in the official capacity of such individu-
14 al as an officer of any department or agency, functions of
15 which are transferred by this title, shall abate by reason of
16 the enactment of this title. No cause of action by or against
17 any department or agency, functions of which are transferred
18 by this title, or by or against any officer thereof in the official
19 capacity of such officer shall abate by reason of the enact-
20 ment of this title.

21 (e) If, before the date on which this title takes effect,
22 any department or agency, or officer thereof in the official
23 capacity of such officer, is a party to a suit, and under this
24 title any function of such department, agency, or officer is
25 transferred to the Commission or any other official of the

1 Commission, then such suit shall be continued with the Com-
2 mission or other appropriate official of the Commission sub-
3 stituted or added as a party.

4 **SEPARABILITY**

5 SEC. 148. If any provision of this title or the application
6 thereof to any person or circumstance is held invalid, neither
7 the remainder of this title nor the application of such provi-
8 sion to other persons or circumstances shall be affected there-
9 by.

10 **REFERENCE**

11 SEC. 149. With respect to any function transferred by
12 this title and exercised on or after the effective date of this
13 title, reference in any other Federal law to any department,
14 commission, or agency or any officer or office the functions of
15 which are so transferred shall be deemed to refer to the Com-
16 mission, other official, or component of the Commission to
17 which this title transfers such functions.

18 **AMENDMENTS**

19 SEC. 150. (a) Section 5314 of title 5, United States
20 Code, relating to level III of the Executive Schedule, is
21 amended by adding at the end thereof the following:

22 "Chairman, Foreign Investment Commission."

23 (b) Section 5315 of title 5, United States Code, relating
24 to level IV of the Executive Schedule, is amended by adding
25 at the end thereof the following:

1 “Members, Foreign Investment Commission (4).”.

2 PART D—DEFINITIONS

3 FOREIGN PERSON

4 SEC. 161. As used in this title, the term “foreign
5 person” means—

6 (1) in the case of a natural person, any individual
7 other than a citizen or permanent resident alien of the
8 United States;

9 (2) the government of any country other than the
10 United States, or of any political subdivision of such a
11 country, or an agency or instrumentality of such a gov-
12 ernment; or

13 (3) a corporation or other entity—

14 (A) that is controlled, directly or indirectly,
15 by any individual or entity described in paragraph
16 (1) or (2), or by any group any member of which
17 is an individual or entity described in paragraph
18 (1) or (2); or

19 (B) a significant interest in which is owned,
20 directly or indirectly, by one or more individuals
21 or entities described in paragraphs (1) and (2).

22 VITAL NATIONAL INTEREST SECTOR

23 SEC. 162. A business enterprise is engaged in activities
24 in a “vital national interest sector of the United States econ-
25 omy” if such business enterprise, directly or through any part

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1 or unit (including any division or subsidiary), conducts or has
2 within the preceding five years conducted, as one of its busi-
3 ness operations, activities in any one or more of the following
4 areas:

5 (1) armaments and defense goods and services, in-
6 cluding activities with respect to any item, or any
7 major component for any item, on the United States
8 Munitions List established under the Arms Export
9 Control Act;

10 (2) nuclear energy;

11 (3) nuclear weapons production or facilities oper-
12 ation; and

13 (4) telecommunications, including broadcasting
14 (DIIC Code 480).

15 SENSITIVE NATIONAL INTEREST SECTOR

16 SEC. 163. A business enterprise is engaged in activities
17 in a "sensitive national interest sector of the United States
18 economy" if such business enterprise, directly or through any
19 part or unit (including any division or subsidiary), conducts or
20 has within the preceding one year conducted, as one of its
21 business operations, activities in any one or more of the fol-
22 lowing areas:

23 (1) banking (DIIC Code 600);

24 (2) transportation (DIIC Codes 401, 450, 461,
25 462, 478), except shipping by water;

1 (2) in any corporation whose equity securities are
2 not publicly traded, upon becoming the beneficial
3 owner, directly or indirectly, of more than 10 per
4 centum of any class of any equity security of such cor-
5 poration;

6 (3) in any business enterprise which is not incor-
7 porated (including an enterprise which is comprised of
8 real estate), upon becoming the beneficial owner of 20
9 per centum or more of the voting securities, or an
10 equivalent ownership interest in, such business enter-
11 prise;

12 (4) in the assets of a business enterprise (including
13 real estate and natural resources), upon becoming the
14 beneficial owner of so much of the assets or other
15 property of such enterprise (including any subsidiary or
16 division) as is sufficient to carry out one or more of the
17 business activities of such enterprise;

18 (5) in any business enterprise, upon becoming the
19 beneficial owner of 25 per centum or more of the total
20 outstanding debt of such enterprise;

21 (6) in any business enterprise, whenever such for-
22 eign person directly or indirectly exercises or has the
23 power to exercise, by means of any oral or written
24 agreement, contract, trust, license, or any other means,
25 control or substantial influence, directly or indirectly,

1 over the conduct of the business enterprise, including
2 control or influence (i) over the election, appointment,
3 or tenure of 10 per centum or more of the board of
4 directors, or over any officers or executive personnel of
5 such enterprise, (ii) over the management or manageri-
6 al decisionmaking of such enterprise, or (iii) over
7 policymaking decisions normally exercised by persons
8 having control or substantial influence over the enter-
9 prise; and

10 (7) in any business enterprise in a vital national
11 interest sector of the United States economy (A) when-
12 ever such foreign person accounts for 25 per centum or
13 more of the gross sales, total income, or net profit of
14 such business enterprise, or (B) when 50 per centum or
15 more of the gross sales, total income, or net profit is
16 derived from a single country.

17 (b)(1) When two or more persons act as a partnership,
18 limited partnership, syndicate, or other group for the purpose
19 of acquiring, holding, or disposing of an interest in a business
20 enterprise, such syndicate or group shall be deemed a single
21 person for the purposes of this Act.

22 (2) The determination of the percentage of any class of
23 security shall be made in the same manner as is required by
24 section 13(d)(4) of the Securities Exchange Act of 1934.